May 31, 2002

D.T.E. 01-108-A

Investigation by the Department on its own motion as to the propriety of rates and charges set forth in the following tariff: M.D.T.E. No. 974, filed with the Department on December 14, 2001 to become effective January 1, 2002 by Boston Edison Company.

APPEARANCES:

William S. Stowe, Esq.
Boston Edison Company
800 Boylston St.
Boston, Massachusetts 02199
FOR: BOSTON EDISON COMPANY
Petitioner

George B. Dean, Esq.
Foley Hoag, L.L.P.
One Post Office Square
Boston, Massachusetts 02109
-and-
Trudy Reilly, Associate General Counsel
Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Street
Charlestown, Massachusetts 02129
FOR: MASSACHUSETTS WATER RESOURCES AUTHORITY
Intervenor

Thomas F. Reilly, Attorney General
Commonwealth of Massachusetts
By: Joseph W. Rogers
Alexander J. Cochis
Assistant Attorneys General
200 Portland Street
Boston, Massachusetts 02114
Intervenor

ORDER ON OFFER OF SETTLEMENT

I. INTRODUCTION

A. Procedural History

On December 14, 2001, Boston Edison Company ("BECo" or "Company") filed for approval by the Department of Telecommunications and Energy ("Department") changes to Rate WR, which provides service solely to the Massachusetts Water Resources Authority ("MWRA"). The Company proposed the changes to Rate WR, M.D.T.E. No. 974 ("proposed Rate WR"), to take effect on January 1, 2002.[1] On December 21, 2001, MWRA filed : (1) a Motion for Suspension and Investigation of proposed Rate WR; and (2) a Petition for Leave to Intervene.[2] On December 27, 2001, the Department determined that further investigation was necessary and suspended the operation of the rates and charges in the proposed Rate WR until

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[1] On December 3, 2001, BECO filed for Department approval its 2001 reconciliation filing ("2001 Reconciliation"), which included the reconciliation of transition, transmission, standard offer service, and default service costs and revenues, and which proposed updated charges and tariffs to take effect on January 1, 2002. The Department docketed the 2001 Reconciliation as D.T.E. 01-78. The 2001 Reconciliation included the Company's Rate WR tariff, M.D.T.E. No. 960. On December 14, 2001, the Company withdrew its request for approval of M.D.T.E. No. 960 and as its replacement filed proposed Rate WR, which is the tariff under investigation in this proceeding.

[2] After MWRA discontinued standard offer service on November 1, 2001, MWRA and BECo entered into a "Standstill Agreement" (Exh. BEC-10). The Standstill Agreement provided for MWRA to continue to pay BECo the charges established in M.D.T.E. No. 944, and later M.D.T.E. No. 976, which became effective January 1, 2002. Under the Standstill Agreement, MWRA agreed to pay BECo, retroactively to November 1, 2001, any increased delivery charges that either were later agreed upon and approved by the Department, or otherwise determined by the Department to be appropriate. MWRA attached the Standstill Agreement to its motion.

April 1, 2001. Boston Edison Company, D.T.E. 01-108 (2001).[3] On January 2, 2002, MWRA was granted intervenor status.

On January 23, 2002, pursuant to notice duly issued, the Department conducted a public hearing and procedural conference. The Attorney General filed notice of intervention pursuant to G.L. c. 12, § 11E. On February 14, 2002, the Department conducted an evidentiary hearing. The Company sponsored one witness, Henry C. LaMontagne, director of regulatory policy and rates for the Company. MWRA sponsored one witness, Lee Smith, managing consultant at LaCapra Associates.

The evidentiary record consists of 17 Department exhibits, four MWRA exhibits, and fourteen Company exhibits. The Company responded to four Attorney General record requests, four Department record requests, and two MWRA record requests. MWRA responded to four Attorney General record requests and one Company record request. The Company and MWRA filed initial briefs. The Company, MWRA, and the Attorney General ("the Parties") filed reply briefs.

On March 26 and April 12, 2002, the Parties sought and were granted extensions of the suspension period of proposed Rate WR.[4] On May 7, 2002, the Parties filed (1) a Joint

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[3] The Department also directed the Company to file revisions to the existing Rate WR, to include the updated charges for 2002 and to be effective January 1, 2002, subject to the outcome of this investigation. D.T.E. 01-108, at 2-3. On January 4, 2002, the Company filed Rate WR, M.D.T.E. No. 976, effective January 1, 2002. On January 4, 2002, the Department allowed M.D.T.E. No. 976 to take effect.

[4] The Department suspended the tariff until June 1, 2002.

Motion for Approval of a Settlement Agreement and (2) a Settlement agreement ("Settlement").

B. Background of Rate WR

Rate WR was first established as a separate rate class to serve MWRA in the Electric Power Supply Agreement between BECo and MWRA ("Power Supply Agreement") approved by the Department in Harbor Electric Company and Boston Edison Company, D.P.U. 90-288 (1991).[5] In D.P.U. 90-288 at 13, the Department found that the proposed rate structure, which was based on anticipated costs and revenues, was reasonable, given the specific delivered voltage level, load characteristics, and other requirements of MWRA.[6]

The Electric Industry Restructuring Act, Chapter 164 of the Acts of 1997 ("Restructuring Act"),[7] specifically required that MWRA be eligible for the ten and 15 percent rate reductions. G.L. c. 164, § 1B(b). BECo's Restructuring Settlement, approved in Boston

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[5] In D.P.U. 90-288, the Department approved, among other things, the Power Supply Agreement between BECo and MWRA and an "Interconnection and Facilities Support Agreement" among BECo, Harbor Electric Energy Company, and MWRA that would allow BECo to deliver electric power to MWRA's waste-water treatment facilities on Deer Island, Boston. In this proceeding, the Power Supply Agreement was admitted as Exhibit DTE-1-1, and the "Interconnection and Facilities Support Agreement" as Exhibit DTE 4-6.

[6] The Department later noted that the Power Supply Agreement (with attached Rate WR) was "approved in accordance with the Department's authority under G.L. c. 164, § 94, ¶ 3, although [the Power Supply Agreement and Rate WR] partake of mixed characteristics of a customer-specific contract and a tariffed rate." Boston Edison Company, D.P.U./D.T.E. 96-23, at 33, n. 20 (1998).

[7] St. 1997, c. 164, entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein."

Edison Company, D.P.U./D.T.E. 96-23 (1998) ("Restructuring Settlement"), did not include a ten percent reduction for MWRA.[8,9] Thus, the Department directed the Company to redesign Rate WR consistent with the rate reductions required by the Restructuring Act. D.P.U./D.T.E. 96-23, at 35-38. Due to the unique load characteristics of MWRA's Deer Island facilities and the corresponding relatively low average unit cost to serve, the Department directed BECo to partially unbundle Rate WR. Id. at 36-37. Only the component charges for standard offer service, energy efficiency, and renewables are separately identified in the tariff and the other charges for distribution, transition, and transmission remain bundled (see Exhs. BEC-4; BEC-9). Thus, MWRA has not been charged, among other things, a specific per kilowatthour ("KWH") transition charge.

II. THE SETTLEMENT

The Settlement provides that the transition charge component of the delivery charge will increase progressively from its present level to the uniform transition charge level billed to all other retail rate classes (Settlement at 4, 5 §§ 1.10, 2.1). Effective January 1, 2011, the price for the Rate WR transition charge will be equal to the uniform transition charge price billed to all other retail rate classes (Settlement at 5, 6, §§ 2.1, 2.1.3). The Settlement adds that during the phase-in period from 2002 through 2010, MWRA shall pay a transition charge

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[8] The Restructuring Settlement was incorporated by reference into the record of this proceeding pursuant to 220 C.M.R. § 1.10(3) (Tr. at 16).

[9] The Department noted that Restructuring Settlement did not specifically cover Rate WR. D.P.U./D.T.E. 96-23, at 37, n.22.

subject to certain minimum usage levels (Settlement at 4, 6-7 §§ 1.10, 2.2).[10] The Settlement proposes a new Rate WR tariff, M.D.T.E. No. 979, to take effect following approval of the Settlement (Settlement at 5, § 2.1.1, Att. B).

The Settlement provides that, beginning on the effective date of the Settlement and through December 31, 2004, MWRA will pay a transition cost adjustment in each individual year equal to fifty percent of the difference between the Rate WR so-called "implicit" transition charge[11] and the uniform transition charge for that year (Settlement at 5, § 2.1.1). From January 1, 2005 through December 31, 2010, the Settlement states, Rate WR will be unbundled and will include a separate transition charge whose price will be fixed each year at a specified percentage of the uniform transition charge (Settlement at 6, § 2.1.2, Att. C).[12]

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[10] The minimum usage levels are 122 gigawatt hours ("GWH") for 2002 through 2004, 116 GWH for 2005 through 2007 and 110 GWH for 2008 through 2010 (Settlement at 6-7, § 2.2).

[11] The Settlement provides that the "implicit" Rate WR transition charge equals the difference between the total Rate WR rate cap and the sum of the charges for standard offer service, unbundled distribution, transmission, energy efficiency, renewables, and default service adjustment (Settlement at Att. A). Applying this formula, the Rate WR "implicit" transition charge for 2002 would be $0.00698 per KWH, compared to the uniform transition charge of $0.01628 per KWH (id.; see Exhs. MWRA-LS, Att. B; DTE-5-1).

[12] For the years 2005 through 2007, the Rate WR transition charge factor will be equal to the average of the ratio for each year from 2002 through 2004 of (a) the total amount of transition costs that would have been paid under Rate WR had the Rate WR transition cost adjustment during those three years been equal to three fourths (75 percent) of the difference between the Rate WR implicit transition cost charge and (b) the total amount of transition costs that would have been paid under Rate WR during those same years had Rate WR reflected the uniform transition charge. For the years 2008 through 2010, the Rate WR transition charge factor will be equal to the average of the ratio for

(continued…)

As noted above, MWRA and BECo entered into a Standstill Agreement in which MWRA agreed to pay BECo, retroactively to November 1, 2001, any increased delivery charges that BECo and MWRA later agreed upon (footnote 2, above). The Settlement calculates that MWRA would pay the Company $346,580.51 in transition costs pursuant to the Standstill Agreement (Settlement at 7, § 2.3.1; Exh. BEC-10, at 3). The Settlement states that the final amount of this portion of transition costs will be adjusted based on the determination of actual billing quantities, and that MWRA will pay such an amount in seven equal monthly installments (Settlement at 7-8, §§ 2.3.1, 2.3.2).[13]

In addition, the Settlement states that, other than where expressly stated, the Settlement: (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) shall not in any respect constitute a determination by the Department as to the merits of any issue raised during the proceedings (Settlement at 8-9, § 3.1). The Settlement also states that it establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (id. at § 3.2).

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[12](…continued)
each year from 2002 through 2004 of (a) the total amount of transition costs that would have been paid under Rate WR had the Rate WR transition cost adjustment during those years been equal to seven eighths (87.5 percent) of the difference between the Rate WR implicit transition charge and (b) the total amount of transition costs that would have been paid under Rate WR during those same years had Rate WR reflected the uniform transition charge (Settlement, Att.C).

[13] This is for MWRA's usage beginning November 1, 2001, when MWRA left standard offer service, and ending when tariff M.D.T.E. No. 979 takes effect (Settlement at 7, § 2.3.1).

The Settlement provides that the content of Settlement negotiations (including work papers and documents produced in connection with the Settlement) shall be confidential (id. at § 3.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer (id.). The Settlement provides that the content of Settlement negotiations are not to be used in any manner with these or other proceedings involving Parties to this Settlement (id.). Should the Department not approve the Settlement in its entirety, the Settlement provides that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (id. at § 3.5).[14]

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company,

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[14] The Settlement also states that the MWRA and the Company have submitted, separate from this filing, an amendment to the Power Supply Agreement ("Amendment") (Settlement at 9, § 3.6). According to the Settlement, the Amendment modifies (1) the requirement that MWRA purchase its power from BECo, and (2) the restrictions on MWRA's use of power generated on Deer Island (Settlement at 9-10, § 3.6). The Settlement states that the Amendment is not part of the Settlement, nevertheless, approval of the Amendment is a condition of the Settlement and, conversely, approval of the Settlement is a condition of the Amendment (Settlement at 10). The Settlement also states that the Attorney General "takes no position on the propriety of the [Amendment], and his participation in the [Settlement] should not be interpreted as consent to the [Amendment] (Settlement at 10)." The Department has approved the Amendment. Boston Edison Company, EC-02-06 (2002).

D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

IV. ANALYSIS AND FINDINGS

In D.P.U./D.T.E. 96-23, at 37-38, the charge for the standard offer, energy efficiency, and renewables components were unbundled, while the charge for the transmission, distribution, and transition components remained bundled. In approving the partially-unbundled Rate WR, the Department ensured that the costs billed to MWRA would include the same rate reductions as provided to all other retail ratepayers on standard offer service, consistent with G.L. c. 164, §§ 1B(b) and 1G(e). D.P.U./D.T.E. 96-23, at 11-12. The Settlement stipulates that the current partially-unbundled rate structure will continue for Rate WR through December 31, 2004 (Settlement at 6, § 2.1.2).[15]

If MWRA were required to pay the uniform transition charge billed to all other retail rate classes (as in proposed Rate WR), it would incur an increase of approximately 69 percent

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[15] Because of the various requirements of the Restructuring Act, including the mandated rate reductions, unbundling of rates, and the recovery of non-bypassable transition costs, the Department has encouraged the Company and MWRA to engage in negotiations "to resolve a number of matters involving the [Power Supply Agreement], the Rate WR, and the interconnection agreement between the MWRA and the Company's subsidiary, HEEC." D.P.U./D.T.E. 96-23, at 38. Since D.T.E. 96-23, the Department has approved a number of settlements that relate to Rate WR. See Boston Edison Company, D.T.E. 99-107 (Phase II) (2000); Boston Edison Company, D.T.E. 00-82 (2001).

in its costs for delivery services (Exh. BEC-2, exh. BEC-HCL-2, att. B, Rev.; Exh. DTE-2-2; Exh. BEC-9).[16] The Settlement's phased-in increase in the price level for the transition charge, however, will mitigate the adverse bill impacts to MWRA. Therefore, the Settlement is consistent with the Department's rate structure goal of continuity. Berkshire Gas Company, D.T.E. 01-56, at 134 (2002); Boston Gas Company, D.P.U. 96-50 (Phase I), at 133 (1996). In addition, the Settlement's phased-in increase will benefit the Company's other retail customers because those increases in transition charges billed to MWRA will correspondingly lower the amount of the transition costs to be recovered from BECo's other retail customers.

Upon review of the entire record in this proceeding, and for the reasons stated above, we find that the Settlement substantially complies with the Act, the Restructuring Settlement, and is consistent with Department precedent and the public interest.[17] The Department, therefore allows the Joint Motion.

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[16] Delivery services refer to the costs for distribution and transmission services plus the costs billed under the transition, energy efficiency, and renewables charges.

[17] The Department disallows the Settlement's claim of evidentiary privilege set out at pages 8-9, § 3.1. The claim is identical to the settlement provisions the Department disallowed in Boston Edison Company, D.T.E. 00-82 (Phase II) at 9, n. 15 (2001) and Boston Edison Company, D.T.E. 99-107 (Phase II), at 11 n.12. See Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 71-74 (2000).

V. ORDER

Accordingly, after due notice, hearing and consideration, it is therefore

ORDERED: That the Joint Motion to Approve an Offer of Settlement and Settlement Agreement, submitted by Boston Edison Company, Massachusetts Water Resources Authority and the Attorney General on May 7, 2002, be and hereby is ALLOWED; and it is

FURTHER ORDERED: That Massachusetts Water Resources Authority Rate WR, tariff M.D.T.E. No. 974, filed by Boston Edison Company on December 14, 2001, be and hereby is DISALLOWED; and it is

FURTHER ORDERED: That Massachusetts Water Resources Authority Rate WR, tariff M.D.T.E. No. 979, canceling M.D.T.E. No. 976, filed by Boston Edison Company on May 7, 2002, be and hereby is ALLOWED; and it is

FURTHER ORDERED: That Boston Edison Company follow all other directives in this Order.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).